

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE BIRAM,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED

January 24, 2006

No. 256131

Wayne Circuit Court

LC No. 04-406959-CK

Before: O’Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order dismissing his complaint to enforce an arbitration award on his claims for wrongful discharge and violation of the Whistleblowers’ Protection Act, MCL 15.361, *et seq.* We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was executive manager for defendant’s real estate department. After it was discovered that plaintiff had reported several employees to police for allegedly illegal conduct, plaintiff was terminated. He initially filed a grievance, but then withdrew the grievance and sued his supervisor and defendant for wrongful discharge in violation of the Whistleblowers’ Protection Act. The parties settled the case by reinstating the grievance contrary to ordinary grievance procedures. By stipulation, the case proceeded to an independent arbitrator. The independent arbitrator found that defendant violated the WPA and granted a significant monetary award and other relief to plaintiff, but defendant’s Civil Service Commission overturned the decision and award without any explanation and dismissed plaintiff’s grievance. Plaintiff filed suit, claiming that the commission’s actions breached the settlement agreement.

Plaintiff argues that the settlement agreement was actually an arbitration agreement in which the arbitrator’s decision and award was binding on defendant and the commission. We disagree. We review de novo a trial court’s decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Also, the interpretation of contractual language is an issue of law, which this Court reviews de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237, reh den 459 Mich 1204 (1998). “The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties.” *McIntosh v Groomes*, 227 Mich 215, 218; 198 NW 954 (1924). Plaintiff stated on the record that he would be “opting under the Civil Service Commission Rules to have this matter decided by an independent arbitrator as opposed to a City of Detroit employee.” However, the parties agreed

that any challenge to the arbitrator's decision would be resolved according to the "Civil Service Commission Rules" and state law. The personnel rules adopted by the commission merely grant the arbitrator the authority of a hearing officer, and provide the commission with final, binding authority to accept, modify, or reject the decision and award of the arbitrator. Each side also discussed the options for appealing the arbitrator's decision by judicial means and through resort to the commission. Therefore, on its face, the agreement's plain terms contradict plaintiff's argument that the parties intended the arbitration award to stand alone as a self-enforcing, final decision.

Nevertheless, plaintiff argues we should not allow defendant, through the Civil Service Commission, to have absolute control over whether he ultimately receives an award, because that would make the contract illusory. Plaintiff argues that he exchanged the dismissal of his statutory lawsuit for a determination by an independent arbitrator, not the politically motivated commission. We disagree. Plaintiff allowed the dismissal of his original lawsuit in exchange for the reinstatement of his withdrawn grievance. We can only speculate at what good thing plaintiff hoped to gain by reentering defendant's personnel proceedings, but that was the agreement. Those proceedings do not end with an arbitrator's self-effecting award, but with a hearing officer's recommendation, which the Civil Service Commission may reject. Although we would perhaps reach a different conclusion if the Civil Service Commission were provided with unbridled discretion to reject any arbitration award, the parties agreed that they would settle the dispute by adhering to the rules established by the commission and the laws of this state. Therefore, as with any arbitration contract, plaintiff, by foregoing litigation, received an alternative dispute resolution process in exchange, and we are not prepared to declare that the process had no chance of benefiting plaintiff, especially in light of plaintiff's arbitration award.

However, plaintiff persuasively argues that enforcement of the contract's express terms requires us to reject the Civil Service Commission's decision. As explained, plaintiff bargained for reinstatement of his grievance according to the rules of the commission, including those imposed by law. Granting defendant unbridled authority to determine whether it would execute its side of the bargain by adhering to its own rules would reduce the agreement to an illusory contract, but that was not the bargain. Because each side agreed to follow the rules, the contract stands. It follows that any failure to adhere to the established rules would raise the issue of breach. In this case, plaintiff has presented strong evidence that the arbitration award was only overturned because the commission violated the rules that govern it.

Here, the parties concede that the settlement was an agreement to arbitrate plaintiff's dispute, although that arbitration merely meant reentering plaintiff's grievance back into the grievance process. Contracts that require the resolution of statutorily granted rights through alternative (arbitral) means rely for their validity on the chosen, alternative process meeting certain standards.¹ See *Rembert v Ryan's Family Steak House*, 235 Mich App 118, 166; 596

¹ Although the contract here was entered as part of a settlement agreement rather than an employment agreement, the two types of contracts are effectively identical. We see no reason to hold this contract to a different standard than its employment-agreement counterpart.

NW2d 208 (1999). For example, “to ensure that employees have a fair opportunity to vindicate effectively statutory rights, the arbitration procedures must include: (1) clear notice, (2) right to counsel, (3) reasonable discovery, (4) a fair hearing, and (5) a neutral arbitrator” *Id.* Moreover, “to allow for sufficient review, arbitral awards must be in writing and contain findings of fact and conclusions of law.”² *Id.*

Here, the record reflects that the commission did not issue any findings of fact or conclusions of law in writing, contrary to *Rembert’s* directive and the commission’s own administrative rules.³ Instead, the documents submitted by the parties indicate that the commission merely overturned the arbitrator’s award and dismissed the grievance, lending credence to plaintiff’s assertions of bias and political persuasion. This lack of adherence to the arbitration contract’s ground rules suffices to create a genuine issue of fact that is material to plaintiff’s claim that defendant undermined the agreement and breached the contract, so summary disposition of plaintiff’s claims was inappropriate in light of the facts presented. MCR 2.116(C)(10). If the trial court ultimately finds that the commission failed to comply with its rules, then the matter would be within the circuit court’s equitable authority to redress. Therefore, we reverse the trial court’s grant of defendant’s summary disposition motion and remand for a factual determination whether the commission adhered to the rules outlined in this opinion, including the rules requiring written findings of fact and law. If the trial court finds that the commission failed to comply with any of the rules governing its disposition of the dispute, then the court shall remand to the commission with instructions to comply, just as it would with any other arbitrator.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O’Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot

² Because of the unusual procedural posture of this case, a surface conflict arises over which standard applies: the standard of review for ordinary arbitration decisions or the standard generally associated with civil service commission decisions. Ordinarily the decision of a civil service commission is reviewed through the procedural device of superintending control, and the decision is affirmed if substantial evidence supports it. *In re Payne*, 444 Mich 679, 687, 690; 514 NW2d 121 (1994). However, the parties concede that the settlement was an arbitration contract regarding a dispute over statutory rights, and their assertions on the original record demonstrate that they intended to preserve judicial review of the arbitrator’s decision as though the ordinary rules of arbitration applied. Therefore, we apply *Rembert’s* rules to this dispute’s arbitration.

³ Personnel Department, Rule XVII, Section 6(d), states in relevant part, “If the Commission’s decision is different from that of the hearing Officer the reasons will be detailed in writing and given to the parties.”